

## United States District Court, Northern District of Illinois

(10)

Name of Assigned Judge or Magistrate Judge	James B. Moran	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	03 C 852	DATE	2/19/2003
CASE TITLE	Ujjaval Bipichandra Dave vs. Immigration & Naturalization etc.		



[In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

## Memorandum Opinion and Order

## DOCKET ENTRY:

- (1) ☐ Filed motion of [ use listing in "Motion" box above.]
- (2) ☐ Brief in support of motion due \_\_\_\_\_.
- (3) ☐ Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.
- (4) ☐ Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (5) ☐ Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (6) ☐ Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.
- (7) ☐ Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.
- (8) ☐ [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.
- (9) ☐ This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
☐ FRCP4(m) ☐ Local Rule 41.1 ☐ FRCP41(a)(1) ☐ FRCP41(a)(2).
- (10) ☒ [Other docket entry] Enter Memorandum Opinion and Order. Plaintiff's motion for a stay is denied and the petition for a writ of habeas corpus is dismissed for lack of subject matter jurisdiction.
- (11) ☒ [For further detail see order attached to the original minute order.]

<input type="checkbox"/> No notices required, advised in open court.	 	number of notices	<b>Document Number</b>  <div style="font-size: 48pt; text-align: center;">9</div>
<input type="checkbox"/> No notices required.		<b>FEB 20 2003</b>	
<input type="checkbox"/> Notices mailed by judge's staff.		date docketed	
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commence proceedings, adjudicate cases, or execute removal orders against any alien under this chapter.

8 U.S.C. § 1252(g). This section effectively precludes district courts from reviewing any decision of the Attorney General to commence removal proceedings. Chapinski v. Ziglar, 278 F.3d 718, 720 (7<sup>th</sup> Cir. 2002).

Plaintiff frames this suit as a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2241. The Supreme Court has held that § 242(g) does not foreclose all use by aliens of the general habeas corpus statute. I.N.S. v. St. Cyr, 533 U.S. 289 (2001). This decision does not however disturb the holding of Reno v. American-Arab Anti-Discrimination Committee, 525 U.S. 471 (1999) in which the Court determined that § 242(g) blocks district court review of particular administrative decisions. Sharif ex rel. Sharif v. Ashcroft, 280 F.3d 786, 787 (7<sup>th</sup> Cir. 2002). The Seventh Circuit has determined that review by a district court of the three categories of actions mentioned in § 242(g) – decisions to commence proceedings, adjudicate cases, or execute removal orders – is blocked even when framed as a petition for writ of habeas corpus. *Id.*; Chapinski, 278 F.3d at 720; Bhatt v. Reno, 204 F.3d 744, 746 (7<sup>th</sup> Cir. 1999).

The relief plaintiff seeks here is nothing more than a review of the removal order executed by the INS. Review of this administrative decision is limited by statute and we cannot use the habeas corpus statute to allow petitioner to get around this jurisdictional bar.

For the foregoing reasons, plaintiff's motion for a stay is denied and the petition for a writ of habeas corpus is dismissed for lack of subject matter jurisdiction.

Feb. 20, 2003.

  
JAMES B. MORAN  
Senior Judge, U. S. District Court